CF0000062492

(2)

समक्ष उच्च न्यायालय मध्यप्रदेश, जबलपुर

दांडिक अपील क्र. 2403 .....

दांडिक प्रक्रिया संहिता की धारा 374(2) के अंतर्गत अपील ज्ञापन

11890
8/9/98
Filed on ..... by Shri Hemraj Selly ..... Advocate
Rle. A. R.

अपीलार्थी :- अभियुक्त (दि. 15-2-98 से जेल में)

रतनू यादव
आयु 50 वर्ष
आत्मज लूटन यादव
निवासी ग्राम – सुरखी, थाना भाटापारा ।
ग्रामीण क्षेत्र, जिला रायपुर (म.प्र.)

विरूद्ध

प्रत्यर्थी :- अभियोजन

म.प्र. शासन
द्वारा थाना भाटापारा
ग्रामीण क्षेत्र

Copy of Petition ...
CLLR
8/9
S/Sh. Advocate Genl
M. P. Jabalpur

अपराध	कारावास/शास्ति
भा.द.वि. की धारा 302	आजीवन कारावास और 2,000 रू. अर्थदण्ड
भा.दं.वि. की धारा 201	5 वर्ष का कठोर कारावास और 1000 रू. अर्थदण्ड न पटाये जाने की स्थिति में 1 वर्ष और 6 माह का कारावास और भुगताया जावे ।

अधीनस्थ न्यायालय श्री जे.एस. वर्मा द्वितीय अपर सत्र न्यायाधीश बलौदा बाजार जिला रायपुर म.प्र. के सत्र प्रकरण क्रमांक 159/98, पक्षकार म.प्र. राज्य वि. रतनू यादव में पारित निर्णरू दिनांक 08/06/99 को घोषित होने के उपरांत व्यथित अपीलार्थ्ज़ी अपील ज्ञापन प्रस्तुत करता है :-

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.No.2403/99 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक था आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND
HON'BLE MR. V.K. SHRIVASTAVA, JJ.

11-9-2006

Shri R.K. Jain, amicus curiae for the appellant.

Shri U.N.S. Deo, Additional Public Prosecutor with Shri D.K. Gwalre Deputy Govt. Advocate, for the State/respondent.

Oral Judgment dictated on *Dais*.

In this case, Shri Ajay Shrivastava, Advocate, was appointed by the High Court Legal Aid Committee on behalf of the accused/appellant to argue the appeal, but he has not appeared. Shri R.K. Jain submitted that Shri Ajay Shrivastava has asked him to appear & argue the case, and he is ready to argue the appeal, therefore, Shri R.K. Jain is appointed as amicus curiae on behalf of the accused/appellant.

PER L.C. BHADOO, J.

This appeal is directed against the judgment of conviction and order of sentence dated 8-6-99 passed by the 2nd Additional Sessions Judge, Baloda Bazar in S.T. No.159/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Sections 302 and 201 of the I.P.C., sentenced to him to undergo imprisonment for life and to pay a fine of Rs.2,000/-, in default of payment of fine to further undergo S.I. for one year and to undergo R.I. for 5 years and to pay a fine of Rs.1,000/-, in default of payment of fine to further undergo S.I. for 6 months, respectively. It was further directed that both the sentences shall run concurrently.

The case of the prosecution, in brief, is that on 2nd February, 1998 accused Ratnu Yadav along with his wife Jhuniya Bai left their residence

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

together for going to the house of his brother at village Rajadhar to consult him regarding the sale of house. However, in the evening, only accused Ratnu returned to his house leaving behind his wife. When PW-2 Netram and PW-5 Ishwari, son and daughter of Ratnu, enquired about their mother, he informed them that their mother has stayed back with aunt in order to earn livelihood. On 11th February, 1998, merg intimation Ex.-P/9 was given to the Police Station Bhatapara by PW-3 Nakched Das, Kotwar to the effect that yesterday i.e. on 10-2-98 they were searching for the unknown dead body which was buried in a ditch in the agricultural field of Videshi near the canal, bone of one leg was visible and the bones of ribs were also visible. Kardhan (waist band) was present below the ribs. A pink Sari, yellow colour blouse and green colour petty coat were also visible. After seeing Kardhan and yellow blouse, Netram, son of the deceased, identified that body is of his mother Jhuniya Bai. He also disclosed that his father used to doubt fidelity of his mother for having relations with other persons and he used to quarrel with his mother. He informed that on 2nd February, 1998 his father along with his mother left for Rajadhar. His father returned in the night. On enquiry about his mother, he informed that she has gone out with aunt for earning livelihood. Earlier his father used to quarrel with his mother, therefore, 2 months back a Panchayat was convened and his father was advised not to beat his wife. For the above reasons, his father has murdered his mother.

Receiving this report, S.H.O. approached the Sub Divisional Magistrate, on which Sub Divisional Magistrate under Ex.-P/18 directed H.D. Mire, Executive Magistrate, Bhatapara to accompany the S.H.O., P.S. for preparing Panchanama of the dead body. Executive Magistrate and S.H.O. went to the place where the dead body of the deceased was buried. The dead body was exhumed and Panchanama (Ex.-P/5) of the dead body of the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

deceased was prepared in the presence of Panchas. The site plan (Ex.-P/8) of the place of occurrence was prepared. The dead body of deceased Jhuniya Bai was sent for postmortem examination to the Primary Health Centre, Bhatapara where Dr. T. Khess (PW-1) conducted the postmortem, prepared the postmortem report Ex.-P/1 and he opined that cause of death is shock due to fracture of left parietal bone and effusion of blood on brain surface.

The accused while in the police custody gave memorandum Ex.-P/11 regarding the place where weapon of offence i.e. Lathi was kept and in pursuance of that he got recovered Lathi under Ex.-P/12. Dhoti of the accused was taken into possession under Ex.-P/13. Dehati Nalishi (Ex.-P/18) was given by I.O. Jeevan Nagesh and based on that, First Information Report dated 11-2-98 was registered for commission of offence under Sections 302 and 201 of the I.P.C..

After completion of the investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Baloda Bazar, who in turn, committed the case to the Sessions Judge, Raipur, from where learned 2nd Additional Sessions Judge, Baloda Bazar received the case on transfer for trial.

Prosecution in order to establish the charge against the accused examined 15 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

We have heard learned counsel for the parties.

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

In this case, there is no direct or ocular evidence regarding involvement of the accused/appellant in commission of crime. Whole case rests on the circumstantial evidence and in order to rest conviction based on the circumstantial evidence, as has been held by Hon'ble Apex Court in the matter of **Dhananjoy Chatterjee Vs. State of W.B.** reported in **(1994) 2 SCC 220**, prosecution has to establish the case as per following principle:-

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

Prosecution has tried to establish charges on the following circumstances:-

(i) the accused and the deceased were seen alive together when they left the house together for going to Rajadhar,

(ii) the accused was doubting fidelity of his wife Jhuniya Bai and on account of that he used to beat Jhuniya Bai, therefore, he had a motive to commit murder of deceased Jhuniya Bai,

(iii) false explanation given by the accused to his son and daughter that deceased Jhuniya Bai has stayed back with aunt in order to earn livelihood,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(iv) when on 11-2-98 police came to the residence of the accused, the accused did not open the door of his house and ran away.

At the outset, learned counsel for the accused/appellant argued that in the first instance, prosecution has not been able to establish that the body which was recovered, was of Jhuniya Bai, as, as per the medical evidence and other evidence, body was putrefied and skin was not present on the body, therefore, it was not in identifiable position. Kardhan on the basis of which Netram is said to have identified the dead body is easily available in the market. Merely on the basis of above, it is difficult to identify the body of the deceased.

On the other hand, learned counsel for the State/respondent argued that finding of the trial Court regarding the dead body identified by Netram is based on legal evidence.

In order to appreciate arguments advanced by the respective counsel, we have perused the evidence available on record. PW-2 Netram, son of the deceased, has stated that the dead body of his mother was found in Sendrikhar. When the body was exhumed, face and other parts of the dead body were putrefied. Panchanama (Ex.-P/5) of the body was prepared by the police and same was given to him after postmortem. In the cross-examination, he has stated that when his mother left the house, she was wearing Pink Sari which was found on the body. It is true that the body was not in identifiable condition, but he identified the body based on the clothes. It is incorrect to say that the body which was recovered was not of Jhuniya Bai. PW-4 Ahilya Bai, village Sarpanch, in whose presence the body was exhumed, has stated that there was Kardhan on the waist. The dead body of

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –6–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the deceased was identified based on the clothes and ornaments. PW-5 Ishwari, daughter of the deceased, has also stated that when her mother left for Rajadhar, she was wearing one Kardhan, other ornaments, a Sari of Pink Colour and yellow colour blouse. The body was identified on account of Kardhan on the body. PW-10 Ramratan has also stated that the body was identified by his son. PW-14 H.D. Mire, Executive Magistrate, has stated that when the body was exhumed, Panchas said that the body is of Jhuniya Bai. Netram, son of the deceased, identified the body of the deceased on the basis of Kardhan. Therefore, there is ample evidence that the body which was exhumed from Sendrikhar was identified by Netram, son of the deceased, based on Kardhan and clothes.

As far as arguments advanced by learned counsel for the accused/ appellant that Kardhan which was found on the body is available in the market, therefore, based on Kardhan, the body could not be identified. In the cross-examination of witnesses, particularly, Executive Magistrate and Netram, it has not been specifically asked that Kardhan which was found on the body was not identified by Netram. Moreover, clothes which the deceased was wearing at the time when she left the house were identified by the son, as per the evidence of Executive Magistrate also. Therefore, we do not find any substance in the argument of Shri R.K. Jain that it was not possible that Netram identified the body of his mother based on Kardhan and the clothes.

As far as nature of death of the deceased is concerned, PW-1 Dr. T. Khess has stated that he conducted postmortem on the body of the deceased on 11-2-98. There was injury on the parietal region in the size of 1 cm x 3 cm, clotted blood was present on the injury. On opening of the body, left parietal bone was found fractured, there was clotted blood on the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

brain and membrane of the brain. Right lung was brownish in colour and on dissection, clotted black colour blood came out. Left lung was also in the brown colour and on dissection, clotted black colour blood came out. He has further stated that in his opinion, cause of death was fracture of left parietal region, on account of haemorrhage and collection of blood on the brain. The death was homicidal in nature and his report is EX.-P/1. Therefore, in view of the above evidence, it stands proved that the death of the deceased was homicidal in nature.

As far as first circumstance is concerned, learned counsel for the accused/appellant argued that PW-2 Netram in the first line of his cross-examination has stated that he had not seen his mother and father together going out of the village. Similar is the evidence of PW-5 Ishwari. Therefore, there is no evidence that the accused and the deceased were last seen together when Jhuniya Bai was alive.

But, we do not find any substance in this argument for the reason that in order to appreciate the line referred by learned counsel for the accused/appellant, we have to read whole evidence of PW-2 Netram and PW-5 Ishwari. PW-2 Netram and PW-5 Ishwari have categorically stated that their mother and father left together for village Rajadhar to meet elder brother of their father in order to consult him to sell the house of Surkhi and in the evening, only their father had returned. On enquiry, their father informed that their mother had stayed back with aunt in order to earn livelihood. The portion of the statement referred by learned counsel for the accused/appellant simply says that they have not seen their mother and father going together from the village. But, from their evidence, it is established that they left their house together in the presence of PW-2 Netram and PW-5 Ishwari. This fact further establishes by the fact that in the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -8-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

evening when the accused returned, they enquired from him about their mother. Therefore, there is ample evidence on record that on 2nd February, 1998 the deceased was alive when she left the house with the accused.

Learned counsel for the accused/appellant further argued that the accused cannot be convicted merely on the basis of last seen theory.

It is true that last seen theory is one of the circumstances to connect the accused with the crime, but that has to be supplemented by other circumstances in order to hold the accused guilty for the commission of the crime.

As far as second circumstance is concerned, PW-4 Ahilya Bai, Sarpanch of the village, has stated that the accused used to doubt fidelity of his wife, therefore, a Panchayat was convened and in that Panchayat, the accused has stated that Jhuniya Bai is having relations with Jagdish and his brother, on which Panchayat advised them not to quarrel. In the cross-examination, she has stated that husband and wife used to quarrel. It is incorrect to say that Panchayat was not convened. PW-5 Ishwari, daughter of the accused and the deceased, has also stated that the accused and the deceased used to quarrel. As and when her mother used to talk with somebody else, her father used to doubt her fidelity and, therefore, once a Panchayat was convened and the villagers advised her father not to quarrel. PW-14 H.D. Mire, Executive Magistrate, has also stated that when the body was being exhumed, Panchas present there were talking that the accused used to doubt fidelity of his wife, therefore, he has murdered her. The above fact has also been mentioned in the merg intimation (Ex.-P/9) given by village Kotwar Nakched Das in which it has been mentioned that Netram informed that his father used to doubt fidelity of his mother and he used to

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

quarrel with his mother. Therefore, in view of the above evidence, it stands established that the accused used to doubt fidelity of his wife and he used to quarrel with her, even a Panchayat was convened, therefore, there was strong motive behind the commission of the crime by the accused. In the matters of resting conviction based on circumstantial evidence motive plays a vital role for commission of crime.

As far as third circumstance is concerned, both PW-2 Netram and PW-5 Ishwari, son and daughter of the accused, have categorically stated in their evidence that their father and mother left the house in the morning to go to the village Rajadhar. In the evening, when only their father returned, they enquired from their father as to why their mother had not returned, on which he gave a false explanation that their mother had stayed back with their aunt in order to earn livelihood. There is no reason for son and daughter of the accused to give false evidence against their father. In the cross-examination of these witnesses, nothing has been elicited that on account of any ill will or anything else, they have given false evidence against their father.

Learned counsel for the accused/appellant argued that aunt of these witnesses has not been produced where the accused is said to have left Jhuniya Bai.

But, we are of the considered opinion that production of aunt is not necessary because the accused gave false information to these witnesses. Had the accused left Jhuniya Bai with their aunt and the explanation given by him to his children was not false, then he was at liberty to produce the aunt in order to prove that he left Jhuniya Bai with the aunt. Therefore, false explanation given by the accused to his son and daughter is admissible under Section 8 of the Evidence Act and it is also one of the circumstances in

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —10—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

addition to the other circumstances to connect the accused with the crime in question.

As far as fourth circumstance that the accused ran away when the police came to his house is concerned, PW-5 Ishwari has stated that when the police came to their house, the accused bolted the doors from inside and said not to open the doors, as he is not feeling well. PW-2 Netram has also stated that when the police came in the village, his father asked him not to open the doors and he did not open the doors. When the police came, his father ran away. Therefore, conduct of the accused in not opening the doors and when the police came, he ran away shows that he was involved in the crime in question that is why he did not go before the police and that is why he asked the children not to open the doors and he ran away. All the above circumstances stand established the chain of the circumstances i.e. the accused and the deceased when she was alive were seen together leaving the house on 2nd February, 1998, thereafter, when only the accused returned in the evening to his house, on enquiry by his children, he gave a false information to them that their mother had stayed back with their aunt in order to earn livelihood, the accused used to doubt fidelity of his wife and that is why he used to quarrel and beat her and in that connection, a Panchayat was also convened, which has been proved by PW-4 Ahilya Bai, in that Panchayat, the accused was advised not to quarrel with his wife, when the body was exhumed, the police came in the village, the accused did not open the doors of the house and thereafter ran away, cumulative effect of these circumstances establishes involvement of the accused in crime in question and cumulative effect of these circumstances further establishes the fact that the accused was only author of the crime in question and nobody else.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —11—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Barve	In the result, for the foregoing reasons, we do not find any illegality or infirmity in the finding of the trial Court convicting the accused for the aforesaid offence. The appeal being devoid of merit, is liable to be dismissed and it is hereby dismissed. **Sd/-** **L.C. BHADOO** **Judge**	**Sd/-** **V.K. Shrivastava** **Judge**

P.T.O.